

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY SCOTT VAN HUISEN,

Plaintiff,

v.

UNITED STATES HOUSE OF  
REPRESENTATIVES,

Defendant.

No. 2:23-cv-1869 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

////

1           **I.       Motion for Counsel**

2           Plaintiff has requested the appointment of counsel. ECF No. 2. District courts lack  
3 authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v.  
4 United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may  
5 request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell  
6 v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36  
7 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must  
8 consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to  
9 articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v.  
10 Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to  
11 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.  
12 Circumstances common to most prisoners, such as lack of legal education and limited law library  
13 access, do not establish exceptional circumstances that warrant a request for voluntary assistance  
14 of counsel.

15           Having considered the factors under Palmer, the court finds that plaintiff has failed to  
16 meet his burden of demonstrating exceptional circumstances warranting the appointment of  
17 counsel at this time. The court will deny plaintiff’s motion for counsel without prejudice.

18           **II.       Screening Requirement**

19           The court is required to screen complaints brought by prisoners seeking relief against a  
20 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
21 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
22 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
23 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

24           A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
25 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
26 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
27 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
28 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully

1 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
2 Cir. 1989); Franklin, 745 F.2d at 1227.

3 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
4 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
5 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467  
6 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt  
7 Lake Log Owners Ass’n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under  
8 this standard, the court must accept as true the allegations of the complaint in question, Hosp.  
9 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light  
10 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor, Jenkins v.  
11 McKeithen, 395 U.S. 411, 421 (1969).

### 12 **III. Allegations in the Complaint**

13 At all times relevant to the allegations in the complaint, plaintiff was an inmate at Mule  
14 Creek State Prison. The only named defendant in this action is the United States House of  
15 Representatives. The content of the complaint largely consists of Bible verses and general legal  
16 citations without any explanation as to how they apply to plaintiff. By way of relief, plaintiff  
17 seeks compensatory and punitive damages as well as the imposition of “Ecclesiastical law.” ECF  
18 No. 1 at 6.

### 19 **IV. Legal Standards**

20 The civil rights statute requires that there be an actual connection or link between the  
21 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
22 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
23 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a  
24 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates  
25 in another’s affirmative acts or omits to perform an act which he is legally required to do that  
26 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th  
27 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must  
28 link each named defendant with some affirmative act or omission that demonstrates a violation of

1 plaintiff's federal rights.

2 **V. Analysis**

3 The court has reviewed plaintiff's complaint and finds that it fails to state a claim upon  
4 which relief can be granted under federal law. Plaintiff's complaint must be dismissed. The  
5 court will, however, grant leave to file an amended complaint.

6 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how conditions  
7 have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d  
8 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in specific terms how  
9 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there  
10 is some affirmative link or connection between a defendant's actions and the claimed deprivation.  
11 Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official  
12 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,  
13 268 (9th Cir. 1982).

14 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to  
15 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
16 complaint be complete in itself without reference to any prior pleading.

17 **VI. Plain Language Summary for Pro Se Party**

18 The following information is meant to explain this order in plain English and is not  
19 intended as legal advice.

20 The court has reviewed the allegations in your complaint and determined that they do not  
21 state any claim against the defendant. Your complaint is being dismissed, but you are being  
22 given the chance to fix the problems identified in this screening order.

23 Although you are not required to do so, you may file an amended complaint within 30  
24 days from the date of this order. If you choose to file an amended complaint, pay particular  
25 attention to the legal standards identified in this order which may apply to your claims.

26 In accordance with the above, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's request for leave to proceed in forma pauperis (ECF Nos. 7, 12) is granted.  
28 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees

1 shall be collected and paid in accordance with this court's order to the Director of the California  
2 Department of Corrections and Rehabilitation filed concurrently herewith.

3 3. Plaintiff's complaint is dismissed with leave to amend.

4 4. Plaintiff is granted thirty days from the date of service of this order to file an amended  
5 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
6 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
7 number assigned this case and must be labeled "Amended Complaint." Failure to file an  
8 amended complaint in accordance with this order will result in a recommendation that this action  
9 be dismissed.

10 5. Plaintiff's motion for the appointment of counsel (ECF No. 2) is denied without  
11 prejudice.

12 Dated: October 4, 2023



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

13  
14  
15  
16  
17  
18  
19  
20 12/vanh1869.14+31  
21  
22  
23  
24  
25  
26  
27  
28